

SECOND SUPPLEMENT TO CONSENT TO LEASEHOLD MORTGAGE

#5509
ADOPTED

Reference is made to the Consent to Leasehold Mortgage dated July 17, 1987 (the "Initial Consent") recorded with Suffolk County Registry of Deeds at Book 13923, Page 163 pursuant to which the undersigned ("Landlord") consented to the granting of a Leasehold Mortgage and Security Agreement (the "Initial Mortgage") dated July 28, 1987 from Navy Yard Plaza Development Associates - 39 Limited Partnership, a Massachusetts limited partnership with a place of business at 120 Fulton Street, Boston, Massachusetts 02109 ("Tenant") to The First National Bank of Boston, a national banking association with a place of business at 100 Federal Street, Boston, Massachusetts 02110, its successors and assigns ("Mortgagee") recorded with said Deeds at Book 13923, Page 81, on the leasehold estate of Tenant under the Ground Lease dated July 28, 1987 between Landlord and Tenant (including all amendments, the "Lease"), notice of which is recorded with said Deeds at Book 13923, Page 71.

Reference is further made to the Supplement to Consent to Leasehold Mortgage dated July 27, 1988 (the "Supplement") pursuant to which the Landlord consented to the Amendment to Mortgage (the "First Amendment") between the Tenant and Mortgagee dated July 28, 1988 recorded with said Deeds at Book 14905, Page 1 (the Initial Consent, as supplemented by the Supplement, is referred to collectively herein as the "Consent"; and the Initial Mortgage as amended by the First Amendment and a certain Second Amendment to Mortgage dated July 3, 1990 between Tenant and Mortgagee and recorded with said Deeds at Book 16368, Page 54 is referred to herein as the "Mortgage").

WHEREAS, the Tenant and the Mortgagee have agreed to, among other things, to modify and extend the Loan (as defined in the Initial Consent) for an additional three (3) years and, in connection therewith, Tenant shall execute and deliver to Mortgagee a certain Third Amendment to Mortgage and Security Agreement (the "Third Amendment");

WHEREAS, Mortgagee and the Building 38 Borrower (as defined in the Supplement) have entered into a certain Purchase, Sale, and Settlement Agreement dated _____, 1992 (the "Settlement Agreement") with respect to the Building 38 Borrower's obligations to the Mortgagee under the Building 38 Documents (as defined in the Supplement), and pursuant to which the Building 38 Borrower has executed and delivered to the Mortgagee a Deficiency Note dated _____, 1992, payable to the order of the Mortgagee in the principal amount of \$ _____ (the "Deficiency Note"), which Deficiency Note will be secured by, among other things, the Mortgage.

WHEREAS, Tenant and Mortgagee have requested that the Landlord further supplement the Consent as set forth herein.

W I T N E S S E T H:

Landlord hereby agrees that the Consent is supplemented as follows:

1. To the Landlord's best knowledge, the Lease is in full force and effect and there are no existing events of default thereunder and no event has occurred which with the passage of time or the giving of notice or both will become an event of default.

2. Notwithstanding Article 23 of the Lease, Landlord hereby consents to the Third Amendment (which shall be recorded with the Suffolk County Registry of Deeds together with the recording of this Second Supplement), pursuant to which (a) the Mortgage, as amended by the Third Amendment, shall secure, in addition to Tenant's obligations with respect to the Loan, all obligations of the Building 38 Borrower arising under the terms of, or otherwise referred to in, the Deficiency Note and the Settlement Agreement, and (b) a default by the Building 38 Borrower under the Deficiency Note or the Settlement Agreement shall also constitute a default under Section 5.6 of the Mortgage, as amended by the Third Amendment.

3. Mortgagee has satisfied its obligations under Article 23 of the Lease to give notices to Landlord with respect to the Third Amendment.

4. The Mortgage, as amended by the Third Amendment, shall continue to be entitled to all of the rights and benefits provided to a Qualifying Leasehold Mortgage under Article 23 of the Lease.

5. Landlord's successors and assigns shall be bound by the terms of the Consent, as modified by this Supplement.

IN WITNESS WHEREOF, the undersigned has duly executed this Supplement to Consent as of the ____ day of _____, 1992.

APPROVED AS TO FORM

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel
Dated _____

By: _____
Its: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

_____, 1992

On this ____ day of _____, 1992, before me personally appeared _____, the _____ of the Boston Redevelopment Authority who, being by me duly sworn, acknowledged said instrument to be his/her free act and deed and the free act and deed of said authority.

IN WITNESS WHEREOF, I have hereunto set by hand and fixed my official seal.

Notary Public

My Commission Expires: _____

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DOC. #5509
ADOPTED
7/14/92

THIRD AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

This Amendment is made this ____ day of _____, 1992 by and between Navy Yard Plaza Development Associates - 39 Limited Partnership, a Massachusetts limited partnership with its principal place of business at 120 Fulton Street, Boston, Massachusetts 02109 ("Borrower") and The First National Bank of Boston, a national banking association with its principal office at 100 Federal Street, Boston, Massachusetts 02110 ("Lender"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

WHEREAS, the Borrower is the present lessee of certain premises located at the Charlestown Navy Yard, Boston, Suffolk County, Massachusetts (the "Property") as more particularly described in a certain Mortgage and Security Agreement ("Mortgage") from the Borrower to the Lender dated July 28, 1987 and recorded with Suffolk County Registry of Deeds at Book 13923, Page 81; and

WHEREAS, the Borrower granted the Mortgage to secure the Obligations (as defined in the Mortgage), including, without limitation, under a certain \$11,000,000.00 construction loan arrangement dated July 28, 1987 (the "Loan Arrangement") evidenced by, among other documents, instruments, and agreements, the Mortgage, a certain Promissory Note dated July 28, 1987 in the original principal amount of Eleven Million Dollars (\$11,000,000.00) made payable by the Borrower to the order of the Lender (the "Note") and a certain Construction Loan Agreement dated July 28, 1987; and

WHEREAS, the Borrower and the Lender amended the Loan Arrangement on July 28, 1988, pursuant to which the Borrower executed and delivered to the Lender, among other agreements, a certain First Amendment to Construction Loan Agreement dated July 28, 1988 and a certain Amendment of Mortgage and Security Agreement dated July 28, 1988 recorded with the Suffolk County Registry of Deeds at Book 14905, Page 1; and

WHEREAS, the Borrower and the Lender amended the Loan Arrangement on July 3, 1990, pursuant to which the Borrower executed and delivered to the Lender, among other agreements, a certain Second Amendment to Construction Loan Agreement dated July 3, 1990 and a certain Second Amendment to Mortgage and Security Agreement dated July 3, 1990 recorded with the Suffolk County Registry of Deeds at Book 16368, Page 54 (the Mortgage, as amended is hereinafter referred to as the "Mortgage, as Amended"); and

ETK

WHEREAS, the Borrower has applied to the Lender to further amend the Loan Arrangement, pursuant to which the Borrower shall execute and deliver to the Lender, among other agreements, a certain First Amendment to Promissory Note ("Amendment of Promissory Note") dated the date hereof, a certain Modification Agreement (the "Modification Agreement") dated the date hereof among Borrower, the Building 38 Borrower (as defined in the Mortgage, as Amended), Robert T. Kenney and the Lender, and a certain Deficiency Note (the "Deficiency Note") dated the date hereof in the original principal amount of \$1,498,066.38 made payable by the Building 38 Borrower to the order of the Lender; and

WHEREAS, the Lender has indicated it is unwilling to further amend the Loan Arrangement unless, among other things, the Borrower confirms that the proposed liabilities and obligations of the Borrower under said further amended Loan Arrangement, including, without limitation, liabilities and obligations of the Borrower under the Note, as amended by the Amendment to Promissory Note, the Modification Agreement, and the Deficiency Note are secured as provided in the Mortgage, as Amended,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to further amend the Mortgage, as Amended, as follows:

1. Section 1 of the Mortgage, as Amended, is hereby amended by deleting paragraphs (a), (b), (c) and (d) thereof in their entirety and inserting in lieu thereof the following new paragraphs (a), (b), (c), (d), (e), (f), (g), and (h):

"(a) payment of a certain Promissory Note dated July 28, 1987 made by Borrower to the order of Lender, in the maximum principal amount of ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00) (the "Loan"), at the times, in the manner and with interest accruing on the outstanding principal amount thereof at a fluctuating rate or a fixed rate of interest, if Borrower so elects under the Construction Loan Agreement (as defined below), all as more fully provided in the Construction Loan Agreement and in said promissory note, as amended by a certain First Amendment to Promissory Note dated , 1992; all references to "Note" contained herein shall apply to the July 28, 1987 Promissory Note as amended by the First Amendment to Promissory Note, and as the same may be further amended, modified, renewed or extended;

(b) the performance of all covenants and agreements contained in the Construction Loan Agreement dated July 28, 1987 between Borrower and Lender, as amended by a First Amendment to Construction Loan Agreement dated as of July 28, 1988, and a Second Amendment to Construction Loan Agreement dated July 3, 1990, and as modified by a certain Modification Agreement (the "Modification Agreement") dated _____, 1992 among Borrower, Lender and others; all references to "Construction Loan Agreement" contained herein shall apply to the July 28, 1987 Construction Loan Agreement as amended by the First Amendment to Construction Loan Agreement, the Second Amendment to Construction Loan Agreement and the Modification Agreement, and as the same may be further amended, modified, renewed or extended;

(c) the performance of all covenants and agreements contained in the Collateral Assignment of Rents and Leases dated July 28, 1987 from Borrower to Lender, as amended by a First Amendment to Collateral Assignment of Rents and Leases dated _____, 1992 (the "Collateral Assignment"); all references to "Collateral Assignment" contained herein shall apply to the July 28, 1987 Collateral Assignment of Rents and Leases as amended by the First Amendment to Collateral Assignment of Rents and Leases and as the same may be further amended, modified, renewed or extended;

(d) the payment and performance of all obligations contained in the Modification Agreement including, without limitation, the obligation of the Borrower to pay to Lender the Net Refinancing Gain and Net Resale Gain (as such terms are defined in the Modification Agreement);

(e) the payment of a certain Deficiency Note dated _____, 1992 made by Navy Yard Plaza Development Associates - 38 Limited Partnership (the "Building 38 Borrower") to the order of Lender, in the principal amount of One Million Four Hundred Ninety-Eight Thousand Sixty-Six and 38/100 Dollars (\$1,498,066.38), with interest thereon, as the same may be amended, modified, renewed or extended from time to time (the "Building 38 Note");

(f) the payment and performance of all obligations contained in a certain Purchase, Sale, and Settlement Agreement dated _____, 1992 among the Borrower, the Building 38 Borrower, the Lender and others (the "P & S Agreement" and, collectively with the Building 38 Note, the "Building 38 Documents");

(g) the payment and performance of all covenants and agreements contained in any other agreement or instrument now or hereafter evidencing or securing all or any part of the Mortgage Debt (as defined below) (together with the Note, the Construction Loan Agreement, the Collateral Assignment, and the Modification Agreement, the "Loan Documents");

(h) the payment of the "Mortgage Debt", which term shall include any amounts, including commitment fees and prepayment charges, if any, from time to time evidenced by the Construction Loan Agreement, the Note or the Building 38 Note and, to the extent permitted by law, any other indebtedness or liabilities, direct or indirect, of Borrower or the Building 38 Borrower to Lender due or to become due under the Loan Documents or the Building 38 Documents (including any advances, disbursements, payments, and reimbursements made and charges or costs incurred by Lender pursuant to the terms of any of the Loan Documents or the Building 38 Documents."

2. Section 5.6 of the Mortgage, as Amended, is hereby amended by deleting paragraph (m) thereof in its entirety and inserting in its place the following new paragraphs (m) and (n):

"(m) the occurrence of any "Event of Default" specified in the Building 38 Note and the continuation of such Event of Default for longer than the grace period, if any, applicable thereto; or

(n) the occurrence of any "Event of Default" specified in the Modification Agreement and the continuation of such Event of Default for longer than the grace period, if any, applicable thereto."

3. Section 6.10 of the Mortgage, as Amended, is hereby deleted in its entirety.

4. Except as specifically provided in this Amendment, all of the terms and conditions of the Mortgage, as Amended shall remain in full force and effect, and nothing contained herein or in any agreement or instrument executed and delivered in connection herewith shall in any way impair or release the continued perfection and priority of the mortgage lien and security interest granted to Lender under the Mortgage, as Amended. The Mortgage, as Amended, as modified hereby and as further provided in said Mortgage, as Amended, is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of the Borrower contained therein and herein shall be kept and fully performed, for any breach of which condition the holder hereof shall have the STATUTORY POWER OF SALE.

IN WITNESS WHEREOF, this Amendment has been executed as a sealed instrument as of the _____ day of _____, 1992.

NAVY YARD PLAZA DEVELOPMENT
ASSOCIATES - 39 LIMITED PARTNERSHIP

By: Robert T. Kenney
Robert T. Kenney, General Partner

By: Navy Yard Development
Associates-II, Inc.,
General Partner

By: Robert T. Kenney
Robert T. Kenney, President

THE FIRST NATIONAL BANK OF BOSTON

By: Jared H. Ward
Jared H. Ward, Vice President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this _____ day of _____, 1992, before me personally appeared Robert T. Kenney, the General Partner of NAVY YARD PLAZA DEVELOPMENT ASSOCIATES - 39 LIMITED PARTNERSHIP, and President of Navy Yard Development Associates-II, Inc., who acknowledged said instrument to be his free act and deed and the free act and deed of said limited partnership and corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 1992, before me personally appeared Jared H. Ward, an authorized officer of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, who acknowledged said instrument to be his free act and deed and the free act and deed of said banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

Notary Public

My Commission Expires: _____

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MEMORANDUM

JULY 14, 1992

TO: BOSTON REDEVELOPMENT AUTHORITY AND
THEODORE S. CHANDLER, ACTING DIRECTOR

FROM: PAUL BARRETT, DIRECTOR OF ECONOMIC DEVELOPMENT
VICTOR KAREN, DEPUTY DIRECTOR
JOHN O'BRIEN, PROJECT MANAGER

SUBJECT: CHARLESTOWN NAVY YARD, BUILDING 38

SUMMARY: THIS MEMORANDUM REQUESTS THAT THE AUTHORITY APPROVE THE ASSIGNMENT OF NAVY YARD PLAZA DEVELOPMENT ASSOCIATES - 38 LIMITED PARTNERSHIP RIGHTS UNDER A CERTAIN GROUND LEASE TO NANTUCKET DEVELOPMENT CORP., A WHOLLY-OWNED SUBSIDIARY OF THE FIRST NATIONAL BANK OF BOSTON AND REQUESTS FURTHER AUTHORIZATION FOR THE DIRECTOR TO EXECUTE AND DELIVER A SECOND SUPPLEMENT TO CONSENT TO LEASEHOLD MORTGAGE.

Building 38 is a four story 36,000 G.S.F. granite structure in the Historic Monument Area of the Charlestown Navy Yard which was designated to Navy Yard Plaza Development Associates - 38 Limited Partnership on April 7, 1988 for the purposes of historic rehabilitation in compliance with Design Guidelines established for the Historic Monument Area.

A Ground Lease for Building 38 was executed between the Boston Redevelopment Authority (the "Landlord") and Navy Yard Plaza Development Associates - 38 Limited Partnership (the "Tenant") on June 30, 1988.

Tenant seeks to acquit responsibly its obligations under the Ground Lease and has therefore approached the Landlord with a request to assign its leasehold estate under the Ground Lease to Nantucket Development Corp., a wholly-owned subsidiary of The First National Bank of Boston (the "Assignee"). The Assignee is a Qualifying Leasehold Mortgagee under the Ground Lease and as such will assume the responsibilities and rights as developer and tenant. Notwithstanding the preceding, Assignee's obligations shall be interim and limited to the payment of Tenant's obligations under the Ground Lease for such time as is reasonably required to secure a new developer interest in Building 38.

Despite the assignment of the leasehold estate outlined above, the terms of the Lease executed between the Authority and the Tenant will remain in full force and effect; ie., the Assignee will pay the Authority \$36,000 per year in Base Rent (currently under construction rent) and make an additional annual payment of \$3,600 for maintenance and security. The outstanding annual linkage obligation of \$7,691.67 will be paid by the Assignee and the property will be fully taxable under standard City of Boston tax assessment procedures.

Since the proposed transfer will ensure the continued success of the development and ensure continued annual income to the Authority, it is recommended that the Boston Redevelopment Authority approve the assignment of Tenant's rights under the Ground Lease to Nantucket Development Corp.

An appropriate vote follows:

VOTED: That the Authority hereby approves (i) the assignment of the Tenant's rights under the Ground Lease to Nantucket Development Corp., a wholly-owned subsidiary of The First National Bank of Boston, pursuant to the terms of a Purchase, Sale, and Settlement Agreement between Tenant and The First National Bank of Boston, subject to the Mortgage and Security Agreement dated July 28, 1988 from Tenant to said Bank, which mortgage is a Qualifying Leasehold Mortgage under the Ground Lease, and (ii) the assumption of Tenant's obligations by Nantucket Development Corp. shall be interim and limited to the payment of Tenant's obligations under the Ground Lease for such time as is reasonably required to secure a new developer interest, and (iii) the assignment shall be subject to the execution of an amended DIPP Agreement which obligates the Assignee to pay its proportionate share of the linkage exaction, estimated at \$7,691.67 per year, and further authorizes the Director to execute such documents, agreements, and instruments as the Director deems necessary to effectuate such consent; and

FURTHER

VOTED: That the Authority hereby approves the Third Amendment to Mortgage and Security Agreement between the First National Bank of Boston and Navy Yard Plaza Development Associates - 39 Limited Partnership, and further authorizes the Director to execute such documents, agreements, and instruments as the Director deems necessary to consent to such Amendment, including, without limitation, a Second Supplement to Consent to Leasehold Mortgage.

